

**PROTECTING PARENTS' CONSTITUTIONAL RIGHTS DURING
CHILD ABUSE AND NEGLECT
INVESTIGATIONS AND ASSESSMENTS**

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Please note: During the revision of this paper, Ohio's Statewide Automated Child Welfare Information System (SACWIS) was implemented, which required PCSAs to utilize the Comprehensive Assessment and Planning Model - Interim Solution (CAPMIS). Some Ohio Administrative Code rules were revised to be consistent with CAPMIS. In this paper the revised rule numbers are included in parentheses following the former rule number. For example, OAC 5101:2-33-04 (post SACWIS OAC 5101:2-33-20).

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PROTECTING PARENTS' CONSTITUTIONAL RIGHTS

DURING CHILD ABUSE AND NEGLECT

INVESTIGATIONS AND ASSESSMENTS

INTRODUCTION

The United States Congress amended the Child Abuse Prevention and Treatment Act (CAPTA) in 2003. Among the major additions or revisions to CAPTA, the new law requires:

- At the initial time of contact with the individual subject to a child abuse and neglect investigation, the public children services agency (PCSA) worker must advise the individual of the complaints or allegations made against him/her in a manner protecting the rights of the reporter; and
- Public Children Services Agency (PCSA) workers must be trained regarding their legal duties in order to protect the legal rights and safety of children and families from the initial time of contact during the investigation through treatment.

This document provides guidelines to address commonly asked questions and dilemmas regarding these two CAPTA provisions. A statewide work group of child welfare staff professionals developed this guidance document. The work group consisted of PCSA staff, PCSA agency attorneys and prosecuting attorneys, Ohio Department of Job and Family Services (ODJFS) legal and child protective services staff, staff from the Institute for Human Services (the State Coordinator of the Ohio Child Welfare Training Program), PCSA administrators a juvenile court administrator, and a law professor. This group considered best practice standards, available Ohio Revised Code (ORC) and Ohio Administrative Code (OAC), and the dilemmas faced by PCSAs.

In June 2004, the ODJFS revised the OAC to address the two CAPTA requirements mentioned above. However, additional guidance has proven necessary to address many practice issues facing PCSA workers who conduct child abuse and neglect investigations and the training requirements concerning their legal duties. Statute, rule, or consistent case law may not currently exist on specific issues involved in conducting children services investigations. Therefore, these guidelines may be refined over time as issues are addressed by Ohio or federal statutes, ODJFS, or clarifying case law.

These guidelines are intended to help PCSA staff work with families to protect children from maltreatment, while at the same time protecting parents' Constitutional rights. Some of the content of this document is in response to the CAPTA requirements and/or state statute; some reflects best practice standards that are not reflected in statute. Each PCSA will need to collaborate with its prosecutor and/or agency attorney to implement these guidelines in its agency. PCSAs will need to consider their own internal operations, how the Juvenile Court operates, and how jurists are likely to interpret legal concepts that affect the implementation of CAPTA.

Please note: This paper is limited to discussion of parent's rights related to due process, notification, consent to search and seizure and right to privacy as they relate to caseworkers' investigations of child abuse and neglect. It was written after careful study of current case law on these subjects. As new case law emerges, and as new legal direction becomes available, guidance regarding these issues will be updated.

GENERAL PRINCIPLES

Parents have a fundamental liberty interest in raising their children free of government interference. This principle of Constitutional law has also been referred to as a right of family integrity or a right of privacy. Parents also have a right to be secure from unreasonable search and seizures and to receive the protections of due process of law established in the Fourth and Fourteenth Amendments to the Constitution.

Application of Fourth Amendment Rights to Child Abuse and Neglect Investigations

The Fourth Amendment to the Constitution prohibits unreasonable search and seizures of people, their homes, and their possessions, as follows:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Accessing children or homes while conducting child abuse and neglect investigations is a form of "search" for purposes of the Fourth Amendment. Removing children from parental control is considered a "seizure." Absent a prior court order or an emergency, consent must be obtained before searching a home or seizing a child.

Application of Fourteenth Amendment Rights to Child Abuse and Neglect Investigations

The Fourteenth Amendment says no state shall “deprive any person of life, liberty, or property without due process of law.” Due process consists of substantive and procedural elements. “Substantive due process” pertains to specific rights. It involves determining whether a right exists and, if so, the standard that must be met to deprive a person of that right. “Procedural due process” pertains to the type of process the State must provide to an individual before a person can be deprived of that right.

As applied to child abuse and neglect cases, courts have ruled that parents have fundamental rights to family integrity and privacy. The substantive standard or threshold the State must meet before depriving parents of these fundamental rights is “clear and convincing evidence” of abuse, neglect, or dependency. There are a few situations where the standard is different, most notably, in emergency situations. In an emergency, the State can remove a child from his parents’ care, based upon “probable cause” to believe the child’s removal is necessary to prevent immediate or threatened physical or emotional harm.

It should be noted, however, that case law holds that emergency removals of children require the probable cause standard that the child is in immediate danger of “serious” harm. OAC 5101:2-1-01 reflects this “serious harm” standard. Therefore, whenever these Guidelines refer to emergency removals of children, or exigent (i.e., emergency) situations during investigations, this refers to situations of imminent danger of serious harm.

In cases when the agency files a petition in juvenile court in order to protect the child from serious harm, a hearing must be held on the petition where parents will always have the opportunity to appear and contest the allegations. Procedurally, parents must be given prior notice of the allegations being made by the State and an opportunity to contest the allegations before a Judge or Magistrate. In emergencies the court may proceed before a parent receives notice and an opportunity to be heard. However, after judicial action is taken in an emergency, the State must provide notice and an opportunity to be heard as soon as possible. In Ohio, a shelter care hearing must be held by the end of the next business day and no later than 72 hours after granting an emergency order (i.e., weekends and holidays).

ISSUE 1: NOTIFICATION OF INDIVIDUAL SUBJECTS OF INVESTIGATIONS

The CAPTA Amendment of 2003 requires that, at the initial time of contact, the PCSA must notify the individual subject of the child abuse or neglect investigation of the allegations against the individual.

Questions:

- ***To which types of investigations does this requirement apply?***
- ***What constitutes initial contact?***
- ***How much detail regarding the allegation should the investigator provide to the subject of the investigation?***
- ***Should the investigator inform the subject of the investigation that his/her cooperation is voluntary?***
- ***What if the investigator is unsure who the perpetrator is?***
- ***What if, during the course of the investigative interviews, there are allegations of another instance or different type of maltreatment?***
- ***What if there may be a criminal investigation of the alleged maltreatment?***

To which types of investigations does this requirement apply?

Discussion:

CAPTA is federal legislation and, as such, refers to the federal term "child abuse and neglect." Ohio's definitions of abused and neglected children, as well as other related definitions, do not strictly fit this federal term. Therefore, a question has been raised as to which types of investigations this notification requirement applies.

It appears the intent of the CAPTA amendment was to ensure that subjects are informed of the allegations against them, irrespective of whether the allegation strictly fits within the federal statutory definitions of abuse and neglect.

This requirement includes notifying youth of the allegations against them, for example, in cases of sibling abuse or adolescent perpetrators of sexual abuse.

Guideline:

The CAPTA notification requirement applies to the ***initial time of contact*** with the individuals who are the subjects of the complaint or allegation, regardless of how the agency defines the nature of the complaint or allegations for purposes of assignment to the assessment/investigation (abuse, neglect, dependency, other, etc.). The subject of the investigation may be persons other than the parent, such as a boyfriend or caretaker of the child.

What constitutes initial contact?

Discussion:

The CAPTA requirement reflects an interest in ensuring the civil rights of subjects of investigations are protected. This includes the Fourteenth Amendment right to due process. In accordance with the Fourteenth Amendment, subjects must be aware of the allegations made against them so they may be fully informed prior to giving consent to proceed with the investigation. Therefore, notification must be made prior to engaging the subject in conversation about the alleged maltreatment.

There is no stipulation that the subject be the first person interviewed during the investigation. In some cases, collateral sources of information or the alleged child victim will be interviewed prior to the subject of the investigation.

Guideline:

Initial contact means either the first face-to-face contact or the first phone contact (whichever is first) with the individual subject of the investigation where the PCSA worker is gathering information as part of the investigative process. The notification must be made prior to discussing the allegation with that individual.

How much detail regarding the allegation should the investigator provide to the subject of the investigation?

Discussion:

The Fourteenth Amendment right to due process includes the right to make fully informed, voluntary consent to searches. Therefore, prior to proceeding with the information gathering phase of the interview, the worker must provide enough information so that the individual subject of the investigation knows to what he/she is consenting. Workers are not required to and should not give Miranda warnings. Miranda warnings are given by law enforcement officers to individuals suspected of crimes when the individuals are in law enforcement custody.

However, the identities of the reporter and any person providing information during the course of the investigation must remain confidential as specified in the OAC. In many cases, the individual subject of the investigation can easily determine who knew about the alleged maltreatment and who was likely to report it. The worker's responsibility is to not refute or affirm these identities, regardless of whether the individual subject can make these determinations.

Guideline:

Workers should provide enough information so the subject of the investigation understands why the agency is conducting an investigation, but must protect the identity of the reporter at the same time. Prior to asking the individual subject any questions about the alleged maltreatment, workers should consider using direct, non-inflammatory techniques that address the following elements:

- That a report was made to the agency
- That the agency is required by law to investigate the report
- That the report states abuse or neglect (whichever is the case) may have occurred
- A general description or paraphrase of the report
- That the report states that he/she was possibly involved in the situation

For example, the worker should state that there was a report that the children were possibly neglected in that they were left unsupervised, that a child may have been abused and has bruises on his face, or that a child may have been abused by being touched in a sexual way.

Because of concern about releasing the identity of the reporter, it may be advisable not to provide detailed information from the report regarding how the alleged maltreatment occurred, the frequency of the maltreatment, or any other details. For example, the name of the reporting source cannot be disclosed, nor should the identity of witnesses or specific items of evidence.

Example of appropriate level of detail needed during notification:

"My name is Cathy Caseworker. I am a caseworker with Franklin County Children Services. We are required by law to investigate all reports of possible abuse or neglect. We have received a report about your daughter, Cyndi. May I come in so that we can talk about this?"

Then... (in cases where the subject of the investigation is identified by the reporter):

"Thank you. We received a report that Cyndi may have been abused, because there are bruises on her face. The report also states that you may have been involved in this situation. However, I'm hoping that you will answer my questions and we can get this straightened out."

Another Example (in cases where the subject of the investigation is not known):

"My name is Cheryl Smith. I am a caseworker with Shelby County Children Services. We are required by law to investigate all reports of possible abuse and neglect. We received a report about your son, Terry. May I come in so that we can talk about this?"

Then...

"Thank you. We received a report that Terry was possibly neglected because he was walking around outside, unsupervised last Tuesday evening. I'm hoping that we can discuss it so that we can get it straightened out. Can you tell me about the situation?"

Each worker will need to develop his/her unique interviewing style and adapt it for different situations and different individuals.

Further Suggestions:

ODJFS has two booklets under development on parental rights. These booklets notify parents of their rights and explain agency and juvenile court procedures. It is advisable that agencies develop procedures for distributing these booklets, if they do not already have agency booklets to distribute.

When parents are uncooperative the worker should inform the parents of the agency's legal obligations if the child is believed to be at risk of serious harm. That is, to consult with legal counsel about legal options for protecting the child. Once it is determined that the agency will initiate court action, the worker should notify the individuals as to where and when the court hearing will be held; what

the agency will ask the court to do; how the parent can obtain an attorney; and that the individual should attend the court hearing.

CAPTA also requires that individual be apprised of their rights to appeal agency actions. OAC 5101:2-33-04 (post SACWIS OAC 5101:2-33-20) states that clients have the right to appeal any decision or action the PCSA may take, including the right to appeal the disposition or resolution of child abuse or neglect report. The agency is required, under CAPTA and OAC, to inform parents of these rights.

Should the investigator inform the subject of the investigation that his/her cooperation is voluntary?

Discussion:

Being forthright about the voluntary nature of cooperation can help develop a trusting relationship with clients. However there are some other considerations to keep in mind: a) CAPTA does not require that we inform subjects of the voluntary nature of their involvement; b) the subject's involvement may become involuntary by court order (e.g., orders to access the child or Protective Supervision); and c) communication regarding the voluntary nature of the subject's involvement may invite some subjects to refuse to cooperate.

Guideline:

Workers are not required to inform the subject of the voluntary nature of the investigation. The worker will need to use his/her judgment and the advice of his/her supervisor to make decisions on a case-by-case basis. If the subject directly asks if his/her cooperation is voluntary, the worker should reply honestly that it is. If the parent asks about what would happen if he/she refuses to cooperate, the worker should explain that: a) he/she must continue to investigate the allegations, b) there are several options, including legal intervention that may be implemented, and c) the worker will speak with his/her supervisor regarding the best course of action. The worker should deliver this information as fact, not threat.

What if the investigator is unsure who the perpetrator is?

Discussion:

In many cases, the identity of the perpetrator is not initially known. Many reports allege harm to the child without identifying anyone as the person responsible for that harm.

Guideline:

In the course of the investigation, information may be obtained from one individual that another individual could have caused the maltreatment. In these situations, the worker must notify that individual of the allegation against him/her prior to gathering information from him/her.

What if, during the course of the investigative interviews, there are allegations of another instance or a different type of maltreatment?

Discussion:

It is not uncommon during the investigation for different or additional maltreatment to be identified or alleged. CAPTA focuses on the initial contact, and does not specifically address this issue. However, it is considered best practice to give the individual a chance to make an informed decision about whether to continue with the investigation in light of the additional allegations.

Guideline:

It is considered best practice (but not required by CAPTA) for the worker to notify the subject of the investigation of additional allegations prior to seeking information about those allegations from him/her.

Example:

“Mrs. Jones, I need to talk with you further about the situation we’ve been investigating. We have additional information regarding Carol that that she was touched in a sexual way and that you may have been involved in this. I need to talk with you about any information you have about that situation so that we can be sure that Carol is safe. Can you tell me what you know about this?”

What if there is a criminal investigation of the alleged maltreatment?

Discussion:

Although CAPTA is silent on this issue, guidance has been provided by the U. S. Department of Health and Human Services, Administration for Children and Youth, (www.hhs.gov April 2005, Children's Bureau, Initiatives):

“... states should be careful not to compromise their own investigations or a concurrent criminal investigation that may lead to criminal charges against a perpetrator of serious child maltreatment. In cases alleging severe physical abuse or sexual abuse, for example, it is critical that CPS and law enforcement investigations be either jointly conducted or at the least carefully coordinated. Investigation of cases involving alleged perpetrators of serious crimes against children should be synchronized between CPS and law enforcement so that relevant evidence of offenses not be concealed or destroyed, child victims not be subjected to undue influence to give or not give information to CPS or law enforcement investigators, or that actions get taken that would place children at greater risk. Such coordination should help ensure that criminal investigations are not undermined.”

Guideline:

The PCSA should coordinate investigative activities with law enforcement so as not to compromise a criminal investigation. In Ohio, this is stipulated in each county's Memorandum of Understanding (MOU).

In cases involving criminal investigations, law enforcement officers should determine how and when to notify the subject of the investigation and workers should follow their lead.

However, if coordination of the investigation cannot be accomplished within OAC time line requirements for the safety assessment and protective services investigation, PCSA workers should proceed with the investigation. They should first notify law enforcement of the agency's determination to pursue its investigation. Then, in conducting their investigation, PCSA public children services workers should act carefully to avoid compromising the criminal investigation.

At times, there are cases where referral information indicates that the child is not in immediate danger of serious harm and law enforcement requests the agency to “hold off” on investigative activities in order to build a criminal case. In these

cases, workers should consult with their supervisors as well as the county prosecutor or agency attorney, as needed.

Further Suggestion:

PCSA managers should review their MOU and use these Guidelines to revise it as necessary.

ISSUE #2: OBTAINING CONSENT FROM THE SUBJECT OF THE INVESTIGATION

The Fourth Amendment of the US Constitution stipulates persons have the right to be free from warrant-less searches. Courts have determined that Fourth Amendment rights apply to certain aspects of CPS investigations, primarily interviewing children and the subjects of the investigation, and accessing children.

Workers may have access to the home or child only under the following circumstances:

- ***The subject of the investigation consents. Consent must be informed, freely given, and not coerced;***
- ***There is an emergency or exigent circumstance.***
- ***The agency or law enforcement has a warrant or court order.***

Questions:

- ***What is "informed" consent?***
- ***What types of actions could invalidate consent?***
- ***Are behavioral, rather than verbal indicators of consent sufficient?***
- ***Are separate consents needed to look in cupboards and bedrooms and take pictures of the home?***
- ***What are exigent circumstances?***
- ***What if the subject refuses to allow the worker access to the home or the child?***

- **How does the worker obtain a court order compelling the subject to cooperate with the investigation?**

What is "informed" consent?

Informed consent involves the worker identifying him/herself, the PCSA represented and the purpose for the visit so the person can make a knowledgeable decision about whether to consent to entry or a search. The worker should not present him/herself in such a way as to lead people to believe that they must let the worker in.

What types of actions could invalidate consent?

Discussion:

Consent must be knowing, voluntary, and freely given, and can be revoked at any time by the consenter.

Guidelines:

Consent may not be obtained by threat, intimidation, duress, promises, or subterfuge. For example, workers may not obtain consent by doing the following:

- Threatening to call in law enforcement to obtain cooperation
- Threatening to remove the child because the individual subject has not cooperated with the investigation
- Promising the subject he or she will not have his/her child removed if cooperation is forthcoming
- Using words or behavior which suggests that the worker has a warrant or gives the impression that he/she has authority to enter without consent

The worker should explain the purpose for conducting the investigation and ask for the subject's cooperation (see Issue I: Notification above).

If the individual subject refuses to cooperate, the worker should seek guidance from his/her supervisor and agency attorney/prosecutor. However, the worker should not use this as a threat. A recommended response would be, "I will go back to the office and talk with my supervisor about this situation." The worker

and supervisor would then discuss the situation and determine the next course of action.

It is important to understand that, while consent (except in the case of exigent or emergency circumstances- as described in Issue #2) must be obtained to gain access to the child or the home, consent is not necessary to conduct other investigative activities, such as interviewing collateral contacts. Therefore, some investigative activities may proceed even if the subject has refused to cooperate with the investigation.

Are behavioral, rather than verbal indicators of consent sufficient?

Discussion:

Yes. Examples of behavioral indicators may include the subject inviting the worker in, asking the worker to sit down, freely talking with the worker about the allegation, or silence that implies consent. When the client is silent, the worker should say something like, "If this is not ok with you, please tell me. I am assuming your silence means this is acceptable to you." If the client remains silent, the worker may proceed and should document what he/she did, and why.

Are separate consents needed to look in cupboards and bedrooms, and to take pictures of the home?

Discussion:

Yes. Consent (either verbal or behavioral) given to participate in the interview is limited to that interview. Separate consents are required for additional investigative activities, such as looking in cupboards or bedrooms or taking pictures of the home.

Furthermore, workers should determine which areas of the home to inspect based on the allegation and based on what they find once they enter the home. For example, if an allegation states that there are feces in the living room, the worker would look only in the living room. However, if the worker notices a putrid smell coming from the bathroom, he should look in the bathroom to find out if the toilet is backed up or if there is broken plumbing.

Guideline:

The worker should seek separate consents for investigative activities, such as looking in cupboards and taking pictures of the child's environment. OAC 5101:2-34-32 [I] (post SACWIS OAC 5101:2-36-03) requires caretaker consent

to take pictures of the child's environment. If the subject does not give consent for those activities, then the worker must not conduct those activities. The worker should document all consents and activities in the case record.

Example:

"Mrs. Jones, part of the information we received was that there was insufficient food in the house. I want to be as fair and objective as possible. So, in order to find out if there is enough food for your family, I'll need to look in your cupboards and refrigerator. Could I get your permission to look in the cupboards and refrigerator to assess your food situation? Would you please come with me, so that you can show me around?"

In regard to photographing a child's injuries, OAC 5101:2-34-32 (I) (post SACWIS 5101:2-36-03) allows pictures to be taken of the child's areas of trauma and does not require parental consent. However, it is good casework practice and respectful to ask for the parent's consent to take pictures of a child's injuries. This may require that the worker or parent remove the child's clothing. It is advisable to obtain the parent's consent when removing clothing.

The worker should use discretion in determining when to check for injuries and photograph them. The worker should not routinely check for injuries or photograph routinely for every allegation of abuse or neglect. The worker should do so only when the allegation indicates that there are possible injuries.

This raises the question of whether the worker should check for injuries in addition to the ones reported in the allegation. The worker should do so when there is good reason to believe that additional new or old injuries (or marks) may be present. For example, perhaps a sibling indicated that the alleged child victim had multiple injuries, perhaps a previous case record substantiated abuse with multiple injuries, perhaps the worker sees multiple bruises on parts of the body not covered by clothing, or perhaps the child disclosed additional injuries. In these types of situations it may be permissible to remove clothing and take photographs of the other injuries.

If the parent refuses to give consent to check for injuries or take photographs, the worker should consult with his/her supervisor on the best course of action to take.

The OAC also allows mandated reporters to take photographs of injuries and to take photographs at out-of-home settings (school, foster home, day camp, etc.).

What are exigent circumstances?

Discussion:

The Fourth Amendment allows access to the child and the home without consent if there are exigent circumstances. Exigent circumstances are emergencies where the child is in immediate danger of serious harm and time does not permit obtaining a court order. An example would be if the worker arrives at the home and finds a toddler alone.

Guidelines:

In exigent circumstances the worker may proceed with gaining access to the child without parental permission. The worker should immediately contact his/her supervisor to discuss the situation and develop a plan for securing the safety of the child. The worker should follow agency policy and procedure for removing the child from the home if that becomes necessary.

In other exigent circumstances the situation may be dangerous for the child and the worker. In these cases, law enforcement officers should be called to the home.

What if the subject refuses to allow the worker access to the home or the child?

Discussion

Absent a court order, parents have a right to refuse to talk with the investigator and refuse to allow the investigator to talk with their child. Parents also have a right to revoke consent at any time. However, if a parent refuses, the PCSA is still required to conduct an investigation and protect the child.

Guideline

In cases where parents refuse to talk with the investigator or allow the investigator to see the child or the home, workers should gather investigative information from collateral sources of information; repeatedly try to engage the family in the investigative process; and consult with counsel regarding seeking orders from Juvenile Court, compelling the family to comply with the agency's investigative activities.

How does the worker obtain a court order compelling parents to cooperate with the investigation?

Discussion:

In these cases, the agency must address the difficult dilemma of balancing parents' civil rights against the agency's duty to investigate and protect children from maltreatment. Each case must be analyzed on its own merit, as each case is unique.

Juvenile courts have procedures for compelling parents to comply with requests to interview or observe the child or access the home, such as "orders to access" or "temporary protective orders." Courts vary in their procedures for obtaining these types of orders. Judicial officers will consider whether there is reasonable belief that the child is in danger of maltreatment when determining whether to compel the parents to cooperate. Agencies are unlikely to obtain a juvenile court order when the report is vague. It may also be difficult to obtain a court order when the report is anonymous, unless the worker has gathered additional sufficient information to satisfy the court that there is a reasonable belief that the child is in danger of maltreatment.

Guidelines:

In cases where there are no exigent circumstances (i.e., the child is not in immediate danger of serious harm) and the parent refuses to cooperate with the investigation, the worker should consult with his/her supervisor and prosecutor or agency attorney to consider any appropriate legal action to be taken.

PCSA screeners should gather complete, detailed information about the allegation from the reporter, so the worker has sufficient information to present to juvenile court, if necessary.

If the screening report alleges child maltreatment but is vague or non-specific, the worker should consider gathering additional information from collateral sources of information prior to approaching juvenile court for an order compelling access to the child. Juvenile court will consider what information has been obtained when making a determination of whether to order the parents to comply with the investigation.

Further Suggestion:

Workers should have access to agency attorneys or prosecutors to discuss these and other questions related to legal procedures. If this type of legal assistance is unavailable in a county, the agency should consider necessary approaches to arrange for adequate legal assistance.

ISSUE #3: CHILDREN OR NON-PARENTAL ADULTS CONSENTING TO A CASEWORKER ENTERING OR SEARCHING THE HOME

Absent exigent circumstances or a court order, workers must obtain consent prior to entering or searching a home. However, there are times when the parent is not available to provide consent. Workers need to determine when other persons can consent to entering and searching the home.

Question:

When can a person who is not the parent give consent to enter during an investigation?

Discussion

Workers often arrive at a home and the parent is not there, but a child or another adult is in the home. The worker is then faced with the dilemma of whether to proceed with the home visit. Clearly in emergencies, it is permissible to enter and search without permission because exigent circumstances exist. However, there are many situations where it is not clear whether the situation is an emergency, and it may not be reasonable for a worker to accept another person's consent to enter or to search. The decision to enter and/or search the home must be made after considering how to best respect parents' constitutional rights, and fulfill the agency's duty to investigate and protect children.

Guidelines

Safety of the child is paramount. The OAC requires a safety assessment within four days of receiving the report of abuse or neglect. OAC 5101:2-34-06 (post SACWIS OAC 5101:2-36-01[H]) states that, in order to complete a safety assessment, workers must have "face to face" contact with the "parent, guardian, or custodian or caretaker having routine responsibility for the care of the ACV". When an adult who is not the parent offers to allow the worker into the home, the worker should follow their agency policy (if such policy exists) and consider the "totality of the circumstances" including the following:

- Whether the person appears competent to make decisions about whether to allow the caseworker into the home;
- Whether the person appears to be in charge of the home and children while the parent is away

Circumstances may exist where a child can also consent to the worker entering the home and beginning the investigation. However, there may be some reason to believe that the child is not capable of consenting, (i.e.: if the child is young or intellectually impaired). Questions regarding this issue should be discussed with the caseworker's supervisor and, if needed, the prosecuting or agency attorney.

In addition to questions concerning the child's capacity to consent, the agency may have a policy prohibiting an agency worker from entering a home where only the child is present.

If the worker does enter the home after receiving consent from a child or a non-parental adult, the worker should do the following:

- Document the reason for entry and/or search: Note the reason for the visit, who gave consent, the reasons it appeared the person was able to give consent, and what the worker did during the visit (i.e., investigative interview, looked at the child, observed various rooms in the home, etc.)
- As soon as possible, verbally inform the parent about what the worker did, and why. Document this in case notes.

Further Suggestion:

PCSAs should consider developing specific policy about this issue.

A Note about Announced vs Unannounced Home visits

Many questions regarding whether to accept consent from children or non-parental adults can be avoided if home visits are scheduled.

It is good practice to schedule home visits with families, particularly in non-emergency situations. It is a common courtesy and demonstrates respect. However, there are occasions when unannounced visits are necessary, i.e., during an investigation and the family has no phone, or when the element of surprise is needed.

ISSUE #4: INVOLVING LAW ENFORCEMENT DURING INVESTIGATIONS

Children services agencies have a duty to protect children, yet must also protect parent's civil rights. At times, the presence of law

enforcement may be helpful in ensuring that the investigation proceeds. However, agencies must also be careful not to use intimidation during investigations.

Question:

When is it coercive to involve law enforcement during investigations?

Discussion:

Some legal experts argue the mere presence of a police officer could be considered coercive, while others believe law enforcement presence is an acceptable or essential use of authority in some situations and is not considered inherently coercive. The worker's intent in asking law enforcement to assist with an investigative interview is critical. Law enforcement officers should not be involved for the purpose of intimidating the individual into cooperating with the investigation. In general, the presence of law enforcement officers should be limited to the following situations, as stipulated in OAC 5101:2-34-32 (post SACWIS rule OAC 5101:2-36-03). The reason for involving law enforcement officers must be documented in the case record.

- The agency has reasonable belief the child is in immediate danger of serious harm.
- The agency has reasonable belief a crime is being committed, or has been committed against the child.
- The agency has reasonable belief the worker is, or will be, in danger of harm during the course of the investigation.
- The assistance of law enforcement is being invoked pursuant to the county child abuse and neglect Memorandum of Understanding (MOU).

Further Suggestions:

As worker safety is of great concern, agencies may want to consider developing policy related to worker safety in relation to executing the duties associated with the provision of child protective services to children and their families. PCSAs should develop agency policy in conjunction with their legal counsel to ensure compliance with state and federal law. Additionally, the county MOU should specify the normal operating procedures to be employed by all concerned officials in the execution of their respective responsibilities pursuant to division (J)(2) of section 2151.421 of the Ohio Revised Code. Issues related to conducting joint investigations including adhering to the timeframes should be

addressed. Respecting the rights of parents and families in relation to the 4th and 14th Amendments can also be addressed in the MOU.

Workers should be familiar with their county's MOU and policies and procedures for involving law enforcement during investigations. The MOU should specify the situations in which law enforcement should participate in child maltreatment investigations and the tasks they should perform.

PCSA administrative staff should review their MOUs to determine if they should be revised in order to be responsive to CAPTA requirements.

ISSUE #5: CONDUCTING INTERVIEWS WITH CHILDREN AT SCHOOL WITHOUT PARENTAL KNOWLEDGE OR AGAINST PARENTAL WISHES

When parents send their children to school they may expect that only school system staff members will be interacting with their children, and people outside of the school system will not be talking with their children. Conducting interviews at school, without parental permission or against their wishes, may impact their rights to parent their children without governmental interference.

On the other hand, failing to interview a child at school may result in an incomplete investigation, and the agency may fail to protect the child from further maltreatment.

The agency must balance the two dangers inherent in this dilemma: failure to protect the child vs. violating parents' rights to due process.

Questions:

- *When is it permissible to conduct investigative interviews with the alleged child victim at school without first informing the parent about this activity?*
- *When is it permissible to conduct investigative interviews with alleged child victims at school against the parent's wishes?*
- *When is it permissible to conduct investigative interviews at school with the alleged child victim's siblings?*

When is it permissible to conduct investigative interviews with the alleged child victim at school without first informing the parent about this activity?

Guidelines:

Investigative interviews should not be conducted at schools as a matter of standard operating procedure or because it is convenient to do so. Each case should be evaluated to determine the need to interview the child at school.

Specific facts about the allegation should indicate the need to conduct investigative interviews at the child's school. For example, a child who discloses at school that there is current or ongoing physical or sexual abuse may need to be interviewed at the school, if there is good reason to believe that the child will be in danger upon returning home. Indications that the child would be unwilling to discuss the alleged maltreatment in his home would also necessitate interviewing him/her at school. On the other hand, there would be no reason to interview a child at school regarding neglect due to unsanitary conditions at home. It is more reasonable to interview that child at home.

Investigative interviews at school without the parent's knowledge should be limited to the following situations (OAC #5101:2-34-32; post SACWIS OAC 5101:2-36-03 [J])

- There is credible information indicating the child is in immediate danger of serious harm
- There is credible information indicating that the child will be in immediate danger of serious harm upon return home from school or other locations away from home
- There is credible information indicating that the child may be intimidated from discussing the alleged abuse or neglect in their home
- The child requests to be interviewed at school or other location due to one of the circumstances listed above

The worker must follow school protocol in conducting investigative interviews at school. These usually include procedures for gaining permission from a school administrator and specify when a school staff member must be present during the interview. Some schools do not allow investigative interviews. The worker should follow agency procedure for how to proceed in those situations.

The worker must document the necessity of interviewing the child at school in the case record and must, on the same day, attempt a face-to-face contact with the child's parent, guardian, or custodian to inform them that the interview occurred. (See OAC 5101:2-34-32; post SACWIS OAC 5101:2-36-03). This

guidance also applies to interviewing children in other out of home care setting such as day care centers, day camps, etc.

When is it permissible to conduct investigative interviews with alleged child victims at school against the parent's wishes?

Discussion:

This situation is qualitatively different from interviewing children without parents' prior knowledge and requires a higher level of justification to intrude into the constitutionally protected privacy of the family. However, in certain emergency circumstances it is reasonable and legal to interview the child at school against the parent's wishes.

Guideline:

Caseworkers should consult with their supervisor and agency attorney or prosecutor to discuss gaining access to the child at school against the parents' wishes. For example, the agency may request that juvenile court order the parents to comply with the agency's request to interview the child at school.

The worker's activities regarding these situations should be documented in the case record.

When is it permissible to conduct investigative interviews at school with the alleged child victim's siblings?

Discussion:

During the interview of the alleged child victim at school or other location, information may arise which provides a reason to interview the child's siblings at school or other location. For example, the alleged child victim could disclose the sibling has also been recently abused or that a sibling witnessed the maltreatment.

Guidelines:

Workers should not conduct interviews with siblings of alleged child victims at schools or other locations as a matter of convenience.

Workers should limit interviewing siblings of alleged child victims at school to the same situations that were listed regarding interviewing alleged child victims at

school without parental knowledge. Additionally, siblings may be interviewed at school when the alleged child victim provides information that indicates that a sibling might be in immediate danger of serious harm or that the sibling could provide information regarding immediate danger of serious harm to the alleged child victim (OAC 5101:2-34-32; post SACWIS OAC 5101:2-36-03 [K])

Workers should document the reason for interviewing siblings at school in the case record.

Further Suggestion:

PCSA administrators should collaborate with their agency attorney or prosecutor to develop policies and procedures regarding interviewing siblings at school.

ISSUE #6: INTERVIEWING COLLATERAL SOURCES WITHOUT THE SUBJECT'S KNOWLEDGE

A complete investigation requires gathering information from a variety of sources.

Questions:

- ***What are the limits of a caseworker's authority in contacting collateral sources of information?***
- ***What are some public sources of collateral information?***
What are the limits of a caseworker's authority in contacting collateral sources of information?

Discussion:

A complete investigation often requires gathering information from collateral sources that may have information about the family. In most cases, it is possible to gain the subject's cooperation in contacting those people. In some circumstances, it may be necessary to contact collaterals without parental knowledge. In other cases, the worker may need to gather information from collateral sources to support a request to juvenile court for an order compelling the subject to allow access to the home or the alleged child victim. However, doing so may interfere with the individual subject's right to privacy.

On the other hand, failure to gather complete information may result in failure to protect the child from further abuse. The agency is faced with balancing protecting parents' rights while at the same time fulfilling their duty to investigate.

Guidelines:

Workers may make collateral contacts without the parent's or alleged perpetrator's knowledge. OAC 5101:2-34-32 (post SACWIS 5101: 2-36-03) states that PCSA staff may contact collaterals "identified as possible sources of information during the assessment/investigation to obtain relevant information regarding the risk to the children." However, collaterals may be contacted only after the referral has been accepted as a report to be assessed/investigated. In other words, caseworkers must not contact collaterals prior to accepting the referral as a report. Furthermore, PCSA staff must not contact collaterals *in order to determine* whether to accept the referral as a report.

The identity of collateral sources should be gathered from the person who made the referral, from each person interviewed, and from the worker's knowledge of the situation. For example, if the worker knows the child visits her grandmother regularly, the worker could contact the grandmother.

During collateral contacts, the worker should protect the privacy of the family being investigated as much as possible. During the interviews the worker should focus on gathering information about the child, not on making allegations or identifying the perpetrator. The worker should not provide details about the allegation.

Example:

"Mr. Smith, my name is Alice Jones. I am from Guernsey County Children Services. We received a report your nephew, Charles, has two black eyes. We are trying to figure out what happened to Charles. Can you share with me any information that would be helpful in understanding the current situation?"

If Mr. Smith asks for details about the report, the worker could state something like the following: "Mr. Smith I'm sure you can understand the importance of protecting the family's privacy in this situation. I really can't tell you about the details of the report. However, I am very interested in finding out what happened, so we can make sure Charles is safe. Do you have any information that would be helpful in understanding this situation?"

Workers are not required to obtain permission to contact collaterals. However it is also advisable to proceed with the investigation in an open and transparent manner in order to develop trust with the client, as long as doing so does not compromise the safety of the child. For example, the worker could explain the requirement to conduct an investigation and a fair assessment of the family's situation. The worker could ask the subject for a list of people who could help the worker gather information about the family. The worker should ask the subject to complete a "release of information" form to be included in the case record. Following is an example of how to ask for information about collateral sources of information:

Example:

"Ms. Jones, as you know, I need to complete an investigation. I would like to have a fair approach to understanding your family. Would you please give me the names of people I could contact who could help me gain a good understanding of your family?"

Interviewing collaterals against parental wishes is different from interviewing collaterals without parental knowledge. A case-specific analysis should be made to determine whether it is necessary and appropriate to contact a collateral source over the parent's opposition. The worker should consult with his/her supervisor and agency attorney or prosecutor regarding these situations. The worker should consider the following factors in determining whether to proceed with contacting collaterals against the parent's wishes:

- The parent's reasons for objecting (e.g. confidentiality concerns, safety concerns, vs. an unwillingness to cooperate)
- The value of the information the collateral can provide
- Whether the information can be gathered from another source

What are some public sources of collateral information?

There is a body of public information and sources that can be accessed during investigations when parents refuse to cooperate or give access to their children or the home. No permission or signed releases are necessary. These public sources include:

- Criminal and Civil law cases. This information can typically be accessed online. It would behoove a worker to attempt to determine whether or not the parents are involved in any criminal or civil domestic violence

cases, temporary protection or restraining orders, DUI or disorderly conduct cases. Most counties and many municipalities have websites which provide docket information about open and closed civil and criminal cases.

- Birth, death, marriage and divorce records
- Public school “directory information”
- Home addresses, property information and telephone numbers
- State and federal prison information: This information identifies the name of the defendant, convictions, sentences, when an inmate will be released and a photo of the inmate
- Sex Offender Locator

RESOURCES

Ohio Administrative Code 5101:2-34-32 – PCSA Requirements for Assessments and Investigations – available at

<http://onlinedocs.andersonpublishing.com>

“New Child Abuse Prevention and Treatment Act (CAPTA) Requirements Concerning Parental Notification and Legal Rights” available at U.S. /Administration for Children and Families web site:
<http://www.acf.hhs.gov> type in key word, CAPTA

RESOURCES FOR OBTAINING COLLATERAL INFORMATION

Birthdates: <http://www.birthday.com>

Federal Bureau of Prisons: www.bop.gov

411 on line: <http://www.411locate.com>

Electronic Yellow & White Pages: <http://www.switchboard.com>

Sex offender registry: <http://www.sexoffender.com>

Ohio Department of Rehabilitation and Correction (links to Ohio Offender Information Database) : <http://www.drc.state.oh.us>

Home and Relative Information: <http://www.zabasearch.com>

Social Security Death Index: <http://www.ssdilistings.com>